



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Ref: 8EPR-N

Mr. John Cater
Division Administrator
Federal Highways Administration
12300 West Dakota Avenue, Suite 180
Lakewood, CO 80228

Mr. Russell George
Executive Director
Colorado Department of Transportation
4201 E. Arkansas Avenue
Denver, CO 80222

Re: I-70 Mountain Corridor Revised Draft
Programmatic Environmental Impact
Statement, Colorado
CEQ # 20100361

Dear Mr. Cater and Mr. George:

The U.S. Environmental Protection Agency (EPA) Region 8 has reviewed the I-70 Mountain Corridor Revised Draft Programmatic Environmental Impact Statement (PEIS) prepared by the Federal Highway Administration (FHWA) and the Colorado Department of Transportation (CDOT). Our comments are provided for your consideration pursuant to our responsibilities and authority under Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. Section 4332(2)(C), and Section 309 of the Clean Air Act, 42 U.S.C. Section 7609. It is EPA's responsibility to provide an independent review and evaluation of the potential environmental impacts of this project, which includes a rating of the environmental impact of the proposed action and the adequacy of the NEPA document.

Based on EPA's procedures for evaluating potential environmental impacts on proposed actions and the adequacy of the information present, EPA is rating the Preferred Alternative an EC-2 (Environmental Concerns- Insufficient Information). A copy of EPA's rating criteria is attached.

PROJECT DESCRIPTION

CDOT and FHWA are proposing transportation improvements to increase capacity, improve accessibility and mobility, and decrease congestion along the 144 mile-long I-70 Mountain Corridor from Glenwood Springs in the west to C-470 in the east in Colorado. This Revised Draft PEIS, a "Tier 1" document, analyzes proposed alternatives to meet the purpose and need for this action. The Tier 1 decision identifies general capacity, mode, and location for transportation improvements in the Corridor and establishes the framework for future project-level activities. Mitigation strategies for natural resources are described in this Draft PEIS, but specific mitigation measures for each resource will be addressed in the subsequent Tier 2 NEPA documents.

Alternatives considered for meeting the purpose and need for the projects ranged from the No Action Alternative, to transportation management, to action alternatives that included highway improvements, bus, rail, an Advanced Guideway System, and a combination of these components. The Preferred Alternative is a combination of the following: (1) transportation management; (2) a minimum or maximum program of highway improvements (i.e., highway widening, auxiliary lanes, interchange improvements, curve safety modifications, and third bores at the Eisenhower-Johnson Memorial Tunnel and at Twin Tunnels) for either 55 miles per hour (mph) or 65 mph; and (3) the Advanced Guideway System, a technology that has yet to be developed. The transportation agencies are planning on using an adaptive management approach to the Preferred Alternative that allows transportation improvements to be implemented over time.

EPA COMMENTS AND CONCERNS

EPA appreciates that the lead agencies have kept us involved throughout this lengthy process from the scoping period to the prior Draft PEIS in 2004 up to the preliminary draft of the present NEPA document. While some of EPA's concerns with the 2004 I-70 Mountain Corridor Draft PEIS were addressed (e.g., including the CERCLA priority sites within the project study area), others (e.g., the methodology utilized for determining low income and minority communities) were not. EPA also has concerns about mobile source air toxics concentrations near residences, schools, and businesses in the narrow mountain valleys and believes that there should be a commitment at the Tier 1 level for increased monitoring both during and after construction. Attached are our detailed comments addressing our concerns and recommendations for air quality, wetlands, water quality, and environmental justice.

EPA commends FHWA and CDOT for the outstanding collaborative process that has been utilized since the publication of the prior Draft PEIS for this project. Recognizing that some communities would receive the bulk of the adverse project impacts while other

communities would greatly benefit from the roadway and transit improvements, EPA congratulates the transportation agencies for convening stakeholders who were able to reach a consensus recommendation of the Preferred Alternative. The I-70 Mountain Corridor Context Sensitive Solutions process, the Collaborative Effort Team, the Stream and Wetland Ecological Enhancement Program (SWEEP), and the A Landscape Level Inventory of Valued Ecosystem (ALIVE) Components Committee are good examples of how effective outreach can result in more transparent and inclusive decisionmaking and environmentally protective outcomes now and in the future. While EPA would have preferred seeing more commitments for mitigation and additional information on impacts common to all of the action alternatives in this Tier 1 Draft PEIS, we believe that the stakeholder processes that the lead agencies have put in place will ensure that human health and the environment are adequately protected during the Tier 2 process.

Thank you for the opportunity to provide comments on the I-70 Mountain Corridor Revised Draft PEIS. If you have any questions or would like to discuss our comments or rating, please contact me at 303-312-6004 or the lead reviewer of this project, Carol Anderson, at 303-312-6058.

Sincerely,



Larry Svoboda
Director, NEPA Compliance and Review Program
Office of Ecosystems Protection and Remediation

cc by email:

Monica Pavlik, Federal Highway Administration

Wendy Wallach, Colorado Department of Transportation, Region 1

Attachments:

EPA's Rating System

Detailed Comments



U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO -- Lack of Objections: The Environmental Protection Agency (EPA) review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC -- Environmental Concerns: The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce these impacts.

EO -- Environmental Objections: The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no-action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU -- Environmentally Unsatisfactory: The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 -- Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2 -- Insufficient Information: The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new, reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses or discussion should be included in the final EIS.

Category 3 -- Inadequate: EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the National Environmental Policy Act and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

* From EPA Manual 1640 Policy and Procedures for the Review of Federal Actions Impacting the Environment. February, 1987.

EPA'S DETAILED COMMENTS

I-70 Mountain Corridor Revised Draft Programmatic EIS

Air Quality

EPA believes that important air quality analyses and information have been left out of this Tier 1 NEPA analysis. We note that the Executive Summary states that this document is a "stand-alone" document that addresses the same topics as the 2004 Draft PEIS and "...brings the data and analysis up to date" In consideration of these presumptions, EPA expects that the Tier 2 analysis of subsequent I-70 Mountain Corridor projects will provide detailed discussions, data, and other information necessary to address the specific environmental impacts and mitigation associated with the Preferred Alternative. With this premise, EPA offers the following comments on air quality:

Mobile Source Air Toxics: Both the Draft PEIS and the Air Quality Technical Report note that some localized areas may have higher ambient concentrations of MSATs under the Action Alternatives than under the No Action Alternative. However, the Air Quality Technical Report only presents MSATs on a total corridor basis. (See Table 7 in the Air Quality Technical Report.) The project corridor includes features such as narrow valleys, high congestive episodes, and high levels of vehicle miles traveled (VMT) that may in fact concentrate the levels of MSATs near residences, schools, and businesses adjacent to this project. This issue was noted in the Draft PEIS, which states on page 3.1-4, "The localized increases in MSAT concentrations are likely most pronounced along the roadway section in Clear Creek County between Silverthorne and Idaho Springs, and in the Vail Valley where the highway is closer to communities." Given the potential significance of localized increases, EPA recommends that FHWA and CDOT include site-specific MSAT analyses and mitigation in the subsequent Tier 2 documents.

- **Monitoring:** Section 3.1.7 of the Draft PEIS and Section 2 of the Air Quality Technical Report indicate that no PM₁₀ or PM_{2.5} ambient air quality monitoring occurs in the project corridor. EPA recommended in its June 13, 2005 comments on the prior 2004 Draft PEIS that PM₁₀ monitoring should be done both during and after construction. This suggestion is still relevant given the projected levels of re-entrained road dust for the project. (See Table 6 in the Air Quality Technical Report.) In addition, PM_{2.5} monitoring should also be considered because Table 5 of the Air Quality Technical Report shows that "Heavy-duty Vehicle VMT," or diesel-powered vehicles, will be 11 percent of the total VMT in any of the alternatives.
- **Air Emissions Data:** Emissions data information in Table 3.1-1 is presented for only four pollutants and for only two years – 2000 and 2035. The Tier 2 environmental documents for this programmatic EIS should include additional interim years of data. As an example of relevant data, EPA suggests that the

DEIS for the I-70 East project (Section 5) be consulted. (See <http://www.i-70east.com/reports.html>.)

- **Air Emissions Data:** We note that Table 3.1-1 is labeled "Particulate Matter," but appears to only include tailpipe PM_{2.5} emissions, a very small fraction of the total particulate matter emissions associated with motor vehicles. The majority of particulate matter is PM₁₀ and is from re-entrained road dust. This information is provided in Table 6 of the Air Quality Technical Report. Please add this in the Final PEIS. Also, the table lists "Nitrogen Dioxide" (NO₂); however, it is unclear if only NO₂ was addressed or all relevant oxides of nitrogen (NO_x) were included. If not, NO_x should be included in the Final PEIS. In addition, emissions of exhaust volatile organic compounds (VOCs) for this transportation project PEIS should also be included.
- **New NO₂ National Air Quality Standards (NAAQS):** EPA promulgated a revised NO₂ NAAQS on February 9, 2010 (75 FR 6474). Part of the monitoring requirements for this revised NAAQS address the 1-hour 100 ppb component and will require monitors in urban areas near major roads, as well as at other locations where maximum concentrations are expected. Because of the new NO₂ NAAQS, the Tier 2 documents will need to provide information about vehicle NO_x emissions and NO₂ concentrations and appropriate mitigation for NO_x impacts.

Wetlands

The Draft PEIS states on page 2-44 that highway "...improvements must be planned considering all components of the Preferred Alternative consistent with local land use planning." Tier 2 projects that have discharges of dredged or fill material in waters of the U.S., including wetlands, will require permitting from the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act to determine the least environmentally damaging practicable alternative. "Practicable alternatives" are defined as alternatives that are available and capable of being done taking into consideration cost, existing technology, and logistics. Local zoning or land use planning may not necessarily preclude improvements (i.e., highway alternatives) because less environmentally damaging practicable alternatives may include standard industry practices (i.e., zoning changes, variances, condemnation rights, etc.) that could reduce adverse impacts to waters of the U.S. The Draft PEIS wording in this sentence is not consistent with consideration of less environmentally damaging practicable alternatives under the CWA Section 404(b)(1) Guidelines.

Water Resources

EPA is concerned about the continued plan to obtain coverage under the Colorado stormwater general construction permit for stormwater discharges to water bodies. In our previous comment letter dated June 13, 2005 for the initial I-70 Mountain Corridor Draft PEIS, we stated our strong concern that Colorado's stormwater general construction permit will not be appropriate for the construction activities proposed along the I-70

corridor. Pursuant to Section A.9 of the permit, an individual water discharge permit may be required for large projects and for projects that may contribute to a violation of water quality standards. Projects along the I-70 corridor should be handled under an individual permit that specifically addresses:

- Recommendations for staging construction along the project corridor to minimize the erosive potential of adjacent hillsides;
- Best management practices (BMPs) for re-vegetating exposed and cut and fill slopes;
- Requirements for post-construction maintenance of roadways that minimize the transport of sediment and other pollutants associated with highway runoff (e.g., chemical deicers, Cu, Pb, Zn) during precipitation events;
- BMPs for recognizing, diverting, and potentially treating waters that have been exposed to historical mine wastes;
- Requirements for post-construction monitoring of stormwater runoff from management practices (e.g., detention basins) to ensure compliance with existing water quality standards and/or existing pollutant load allocations;
- Provisions to ensure compliance with existing total maximum daily loads (TMDLs) during and post-construction (e.g., 70 percent re-vegetation of cut-and-fill slopes and removal of at least 25 percent of the traction sand applied annually from the confluence of Straight Creek and the Blue River to the west portal of the Eisenhower tunnel); and
- Provisions to ensure compliance with water quality standards in areas where water quality standards have been exceeded but TMDLs have not yet been approved.

Additionally, EPA reiterates our concern regarding impacts of the project on several impaired waters along the project corridor. To address this concern, the Final PEIS should include the commitment that water bodies will not be further impaired by the project. In addition, at the Tier 2 phase, a specific set of BMPs at particular areas should be developed and evaluated.

Environmental Justice

We appreciate the efforts taken to engage the community through public involvement and outreach as discussed in the technical report, and support the continuation of further outreach as outlined for Tier 2. However, the Environmental Justice (EJ) Technical Report and Section 3.9 of the Draft PEIS do not adequately address low-income and minority populations for the purpose of analysis of programmatic alternatives.

- **Methodology:** The Draft PEIS does not contain a sufficient level of analysis or methodologies to support the statement in the technical report Section 5.5 that "...the alternatives are not expected to cause disproportionately high and adverse effects on minority or low-income populations...." We understand that the Tier 2 level will include further analysis, but suggest that the methods used in Tier 1 be reconsidered.

The EJ Technical Report Section 2 defines minority and uses an analysis utilizing census blocks where more than 50 percent of the population is considered minority. We question the reasoning on using 50 percent as the level needed to determine a minority population. The Council on Environmental Quality (CEQ) recommends that minority communities should be identified not only when the minority population exceeds 50 percent, but also when the "...minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis." (See Environmental Justice, Guidance Under the National Environmental Policy Act, CEQ, Appendix A, Guidance for Federal Agencies on Key Terms in Executive Order 12898, § 1-101, p. 25 [Dec. 10, 1997])

In analyzing whether or not the percentage in the affected area is meaningfully greater, agencies typically compare percentages at the census block or other small-scale level with percentages at the county or state level. Based on Table 1, it appears that some communities, such as Gypsum, Avon, Dillon, Silver Plume, and Lawson/Downieville/Dumont have meaningfully greater percentages of minority population than the corresponding counties. As a result, it seems that minority communities should have been identified in this Draft PEIS or the Final PEIS should justify why only the 50 percent threshold was used. Instead, the Draft PEIS defers identification of minority communities to the Tier 2 analysis, making it more difficult to discuss details of potential EJ impacts at the PEIS stage and for potentially affected minority communities to comment on the appropriateness of the PEIS. In addition, the lead agencies have already performed an extensive and commendable public outreach in order to, in part, identify EJ communities. The Draft PEIS should provide tentative identifications of EJ communities based on this outreach so that, again, potentially affected communities can comment.

Regarding the definition of low-income populations, please consider using the U.S. Census methods for determining individuals below the poverty level and reference against Community Development Block Grant AMI methods. We suggest using the estimate that yields the greatest number. Also, the technical report describes the FHWA view of environmental justice as an extension of Title VI. Please also indicate that EO 12898 considers income as well.

- **Direct and Indirect Impacts:** The analysis goes into detail on economic benefits to EJ communities, but provides little detail on environmental and health impacts. While economic benefits may in certain circumstances mitigate EJ issues, environmental and health impacts should be considered to determine if there may be a disproportionately high and adverse impact. EPA believes it is possible to discuss environmental and health impacts in the same depth as economic benefits at the Tier 1 stage, and that this analysis should not be deferred to Tier 2.

We appreciate the discussion of impacts on low-income communities in Section 4.2 of the technical report, which states, “Affordable low-income housing might be located close to highway facilities, as these locations are less desirable (and thus more affordable) than areas located farther from the highway.” According to this statement, we suggest that there is a disproportionate impact on communities adjacent to the highway and recommend further analysis regarding health impacts to these communities to ensure that there is not a disproportionate impact. If a disproportionate impact is found, proper mitigation should be proposed.

General Comments

In general, we found the organization and the layout of this document to be very helpful and reader-friendly. We found a few areas, however, that could be improved in the Final PEIS. For example, the explanation of study areas was inconsistent. We understand that these areas vary by resource, and while there were defined study areas for some resources (e.g., air quality and water resources), there was no definition of the study area for others (e.g., regulated materials – hazardous substances, hazardous waste, and petroleum products). Adding maps to delineate resource study areas would also be helpful for the reader to understand exactly what area was being analyzed for each resource.

In addition, the existing maps were consistently missing Figure numbers (e.g., Figure 3.3-1 on page 3.3-4 and Figure 3.6-1 on page 3.6-14). And we understand that Table 3.3-1, which “...illustrates impacts by alternatives on wetlands, fens, and other waters of the U.S.,” incorrectly referenced as Figure 3.3-1 on page 3.3-5, was missing from this Draft PEIS.